THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 12586 of 1998

O r d e r:

Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

By this writ petition, filed under article 226 of the Constitution of India, the petitioners, who are 22 in number, seek a Writ of Mandamus directing the respondents to initiate land acquisition proceedings under the provisions of the Land Acquisition Act, 1894 in respect of the land, belonging to the petitioners, situated in Bapandoodi village, Krishnagiri Mandal, Kurnool District, which was already acquired for the purpose of forming a road from Dhone to Krishnagiri, and consequently direct them to pay compensation, solatium and other benefits.

The learned counsel for the petitioners submitted that the respondents during 1978-79, for the purpose of forming a road from Dhone to Krishnagiri, which in fact, was a cart track, acquired small extents of lands, belonging to the petitioners, ranging between 5 metres and 8 metres, falling through the course of the road. The petitioners claim that since then they made oral representations in succession to the respondents to initiate land acquisition proceedings for acquisition of the land that was already acquired, but in vain. Finally, the Revenue Divisional Officer, Kurnool, vide his proceedings in Lr. No.4973/92, dated 21.04.1997, requested the Executive Engineer (R & B), Kurnool, to deposit funds to the tune of Rs.53,97,210/- for initiating land acquisition proposals, and he in turn, vide his proceedings in Rc. B1/13/92-97, dated 05.05.1997 requested the Engineer-in-Chief, Erramanzil, Hyderabad, to allot funds as requested by the Revenue Divisional Officer, Kurnool. That in spite of such communication, the respondents have neither initiated land acquisition proceedings nor paid the compensation for the acquire land. The action of the respondents in acquiring the land belonging to the petitioners without paying them any compensation, is violative of the provisions of article 300-A of the Constitution of India, and prayed that appropriate directions be given to the respondents to initiate land acquisition proceedings under the provisions of the Land Acquisition Act, 1894

in respect of the land already acquired and pay compensation and other benefits to the petitioners.

Initially, respondent No.2 and respondent Nos. 4 and 5 filed separate counters. This Court noticing the contrary stands taken in the counters with regard to taking of advance possession of the lands, to know exactly whether advance possession of the land has been taken or not, by order dated 02.03.2005, directed respondent No.2-Revenue Divisional Officer, Kurnool, to file an affidavit clarifying as to which of the statements made in the counters are correct. Pursuant to the said direction, respondent No.2-District Collector, Kurnool, filed affidavit clarifying the position inter alia stating that the Roads and Buildings Department has not taken possession of any land for the purpose of road widening from Dhone to Krishnagiri via Kambalapadu.

At any rate, the learned Government Pleader for Land Acquisition, reiterating the averments made in the counter-affidavits, submitted that the Panchayat Raj Department having laid a metal road on the already existing cart track, ranging from 5.5 metres to 8 metres in width and 23.80 K.Ms. in length from Dhone to Krishnagiri via Kambalapadu, handed over the same to the Roads and Buildings (RI.I) Department on 02.01.1988. The petitioners did not question the action of the Panchayat Raj Department in handing over the cart track after laying a road on it to the Roads and Buildings Department. At the time of laying the metal road, no objection was raised either by the petitioners or the villagers. The Roads and Buildings Department, having taken possession of the road, sent proposals to the Chief Engineer for development and improvements to the existing road, and the Government vide G.O. Ms. No. 615, Transport, Roads & Buildings Department, dated 29.10.1988, accorded administrative sanction for Rs.49.50 lakhs for taking up the improvements, and in pursuance thereof, the Roads and Buildings Department laid a B.T. Road on the cart track that was already in existence, and as the respondents have not acquired land, the question of initiating land acquisition proceedings and paying them compensation does not arise.

The learned Government Pleader while denying that the petitioners made oral representations to the respondents and that the Revenue Divisional Officer, Kurnool, vide his letter dated 21.04.1997 requested the Executive Engineer, Roads and Buildings, Kurnool, for depositing an amount of Rs.53,97,210/-, for initiating land acquisition proceedings in respect of the land already acquired, submitted that the

Requisitioning Department, namely the Executive Engineer, Roads and Buildings, Kurnool, with a view to upgrade the Z.P. road to the standard of Roads and Buildings, i.e. from 11.13 metres to 30 metres, had sent requisition to the Revenue Department for acquisition of Ac. 94.22 of land in Kambalapadu and Krishnagiri villages on 17.10.1992 for improving the road from Dhone to Krishnagiri. Pursuant thereto, the Mandal Revenue Officers of Dhone and Krishnagiri, prepared D.N. and D.D. proposals on 03.02.1993. As per the Government instructions, the Requisitioning Department has to deposit 100% of the market value of the land sought to be acquired before the Land Acquisition Officer, but the Requisitioning Department has not deposited the funds. Since the Requisitioning Department has not deposited the funds, as required by the Government in their instructions, and did not take possession of the land for the purpose of widening the road from Dhone to Krishnagiri via Kambalapadu, the question of initiating land acquisition proceedings, much less paying compensation to the petitioners, does not arise. Since the petitioners are seeking directions to the respondents to initiate land acquisition proceedings, in respect of the lands, said to have been acquired by the respondents during 1978-79 for formation of road, he submitted that this writ petition filed by the petitioners after lapse of nearly 20 years, is liable to be dismissed for laches. He thus submitted that the writ petition be dismissed.

Admittedly, there is a cart track running through the lands of the petitioners from Dhone to Krishnagiri. It is the case of the petitioners that the Panchayat Raj Department during 1978-79, without initiating land acquisition proceedings under the Land Acquisition Act, 1894 formed a road from Dhone to Krishnagiri running through their lands, and thereafter, the Panchayat Raj Department, laid a metal road on the said orad, which extended into the land of the petitioners, ranging in width from 5.5 metres to 8 metres and 23.80 K.Ms. in length, and that in spite of their repeated requests, the respondents neither initiated land acquisition proceedings nor paid compensation. According to the own admission of the petitioners, there existed a cart track, on which the respondents laid a road from Dhone to Krishnagiri, running through their lands, and thereafter, the Panchayat Raj Department laid a metal road, and though the petitioners contend that the respondents extended the metal road into their land, the same is disputed by the respondents *inter alia* contending that they merely laid the metal road on the cart track that existed since a long time, and that at the time of laying of the metal road on the cart track, no villager,

much less the petitioners raised any objections. When such is the stand taken by the respondents in their counter, the plea of the petitioners that since 1978-79 they had been making oral representations to the respondents in succession until they filed the writ petition in 1998, requesting the respondents to initiate land acquisition proceedings and pay them compensation in respect of the acquired land for laying the road, cannot be believed. If the respondents did not act on the oral representations of the petitioners, nothing prevented the petitioners from making representations to the respondents in writing, which is normally the accepted practice when seeking reliefs from governmental authorities or agencies.

Be that as it may, it is the case of the respondents that the Panchayat Raj Department after laying the metal road on the cart track, handed over the same to the Roads and Buildings Department on 02.01.1988. The petitioners at least should have questioned this action of the Panchayat Raj Department in handing over the road to the Roads and Buildings Department, which they did not do so. On the other hand, it is the case of the respondents that the Roads and Buildings Department, having taken possession of the metal road from the Panchayat Raj Department, sent proposals for making improvements to the metal road, and the Government also vide order passed in G.O. Ms. No. 615, Transport, Roads & Buildings Department, dated 29.10.1988, accorded administrative sanction, and in pursuance of such administrative sanction, they converted the metal road into B.T. road.

Though the petitioners contend that the Revenue Divisional Officer, Kurnool, vide his proceedings in Lr. No. 4973/92, dated 21.04.1997, requested the Executive Engineer (R & B), Kurnool, to deposit funds to the tune of Rs.53,97,210/- for initiating land acquisition proceedings in respect of the already acquired land, the same is disputed by the respondents *inter alia* contending that the Roads and Buildings Department with a view to upgrade the standard of the existing Zilla Parishad Road to that of Roads and Buildings Road, proposed to widen/improve the metal/B.T. road from its existing width to 30 metres, but the proposal did not materialize as the Roads and Buildings Department, failed to deposit an amount of Rs.53,97,210/- as requested by the Revenue Divisional Officer, Kurnool, in terms of the instructions issued by the Government, for the purpose of initiating land acquisition proceedings.

Thus it is clear that the proposal mooted by the Roads and Buildings

Department in 1992 to raise the standard of the existing metal/B.T. road (Zilla Parishad Road) from Dhone to Krishnagiri via Kambalapadu to that of the Roads and Buildings Road, by widening/improving, requiring acquisition of the land of the petitioners, did not fructify as they failed to deposit the funds as required by the Revenue Divisional Officer, Kurnool, in terms of the instructions of the Government, for the purpose of acquisition of the land for payment of compensation. When no widening/improvement was made by the Roads and Buildings Department to the existing metal/B.T. road, for the reason of its failure to deposit the funds before the Revenue Divisional Officer, Kurnool, as required by the instructions of the Government, for the purpose of acquisition of the lands required for road widening, the contention of the petitioners that their lands were acquired, cannot be accepted. In that view of the matter, the question of directing the respondents to initiate land acquisition proceedings, and much less directing them to pay compensation to the petitioners, does not arise. The amounts which the Revenue Divisional Officer, Kurnool required the Roads and Buildings Department to be deposited, were in relation to the proposal mooted by them for widening/improvement of the metal/B.T. road in 1992, but not in relation to the stretches of land belonging to the petitioners, which are said to have come under the cart track or the metal/B.T. road that was laid in 1978-79 or 1988.

Power of the Court under Article 226 of the Constitution though discretionary, has to be exercised in a judicious and reasonable manner admitting no controversy. Undue delay and laches disentitles a person to be granted the discretionary relief by the High Court in exercise of its extraordinary jurisdiction under
Article 226 of the Constitution of India. This aspect of the matter, was considered by the apex Court in **Moon Mills Ltd. v. M.R. Meher, President, Industrial Court, Bombay** and **Maharashtra State Road Transport Corporation v. Shri Balwant Regular Motor Service, Amravati.** I n **State of Maharashtra v. Digambar,** the respondents claimed compensation from the Maharashtra Government for the lands acquired by them in 1971-72 after 20 years. The same having been granted by the Bombay High Court, the Maharashtra Government moved the Hon'ble Supreme Court by way of appeal contending that there was undue delay and laches on the part of the respondents in claiming compensation. The Hon'ble Supreme Court allowing the appeal of the Maharashtra Government held as follows:

Undue delay of 20 years on the part of the writ petitioner in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land

alleged to have been taken by the Government agencies, would suggest that his land was not taken against his consent he had acquiesced in such taking and waived his right to take compensation for it.

Thus, when the writ petitioner was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitled the writ petitioner for discretionary relief under Article 226 of the Constitution from the High Court, particularly when virtually no attempt had been made by the writ petitioner to explain his blameworthy conduct or undue delay or laches.

In the instant case also, the petitioners having kept quite for 20 long years, and they having not raised any objection when the Panchayat Raj Department acquired some stretches of their land for laying road and also when the Roads and Buildings Department, laid metal/B.T. road on the already existing cart track in 1988, now cannot be heard to say that the they cannot be deprived of their property without following the due process of law and that they are entitled to be paid compensation and their right under article 300-A of the Constitution of India is infringed, and more so when it is their specific case that the land on which the respondents had laid the road, was in fact, a cart track.

For the foregoing reasons, the writ petition is liable to be dismissed not only on the ground that it lacks merit, but also on the ground of undue delay and laches.

Accordingly, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Date: 20th February, 2006.

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